

PROPERTY TAX APPEAL BOARD'S DECISION

APPELLANT: Elmer H. Morris
DOCKET NO.: 03-29676.001-C-1
PARCEL NO.: 17-09-258-007-0000
TOWNSHIP: North

The parties of record before the Property Tax Appeal Board are Elmer H. Morris, the appellant, by attorney William J. Seitz with the law firm of Fisk Kart Katz and Regan, Ltd. in Chicago, and the Cook County Board of Review.

The subject property consists of a 4,798 square foot parcel improved with a three-story, 110-year-old, commercial loft building containing 13,200 square feet of building area and classified 5-92 by the Cook County Assessor. The subject is located in North Township, Cook County.

The appellant, through counsel, submitted evidence before the Property Tax Appeal Board claiming that the subject's market value is not accurately reflected in its assessment. The appellant argued that the income generated by the subject does not warrant its high level of taxation, and therefore its excessive assessment.

In support of the request for relief due to the subject's diminished income, the appellant's attorney prepared and submitted an "income approach", using the subject's actual income and expenses. The evidence disclosed the subject property's net operating income to be \$92,748. Applying a capitalization rate of 17.83% produced a market value for the subject of \$520,179. A factor of 38%, which represents the Cook County Real Property Classification level of assessment for Class 5a property, was applied to determine a requested total assessment for the subject of \$197,668. In support, the appellant's attorney provided the following: a three-page brief, operating statement affidavits for the subject for years 2000, 2001 and 2002, a copy of the

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Based on the facts and exhibits presented, the Property Tax Appeal Board hereby finds no change in the assessment of the property as established by the Cook County Board of Review is warranted. The correct assessed valuation of the property is:

LAND: \$ 187,055
IMPR.: \$ 70,567
TOTAL: \$ 257,622

Subject only to the State multiplier as applicable.

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subject's January 1, 2003 rent roll, numerous photographs of the subject as well as a copy of a three-page report, entitled "Vacancy, Absorption & Capitalization Rate Overview, Second Quarter 2003 Chicago" prepared by Peterson Appraisal Group, Ltd. In addition, the board of review's decision disclosing the subject's final assessment of \$257,622 for 2003 was provided.

The appellant's counsel submitted a three-page brief suggesting that current market data was provided and utilized by the appellant's attorney in his preparation of the "income approach". The appellant's counsel argued that the income stream generated by the subject property is market level rental income for office space on the near north side of Chicago and the subject's actual rental income reflects market rental rates. The appellant's counsel further argued that the subject's 27% increase from the prior triennial reassessment is not justified by the subject's operating data. The appellant's attorney provided a copy of a three-page report, entitled "Vacancy, Absorption & Capitalization Rate Overview, Second Quarter 2003 Chicago" prepared by Peterson Appraisal Group, Ltd.

The board of review did not submit its "Board of Review Notes on Appeal" or any evidence in support of its assessed valuation of the subject property. The board of review failed to submit any evidence and by letter of April 6, 2007, was notified of being found in default.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the evidence in the record fails to support a reduction in the subject's assessment.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179, 728 N.E.2d 1256 (2nd Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. Section 1910.65 *The Official Rules of the Property Tax Appeal Board* (86 Ill.Adm.Code §1910.65(c)).

The Board finds the appellant's argument that the subject's assessment is excessive when applying an income approach based on the subject's actual income and expenses unconvincing and not supported by evidence in the record. In Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970), the court stated:

[I]t is the value of the "tract or lot of real property" clearly which is assessed, rather than the value of the interest presently held. . . [R]ental income may of course be a relevant factor. However, it cannot be the controlling factor, particularly where it is admittedly misleading as to the fair cash value of the property involved. . . [E]arning capacity is properly regarded as the most significant element in arriving at "fair cash value". . . Many factors may prevent a property owner from realizing an income from property, which accurately reflects its true earning capacity; but it is the capacity for earning income, rather than the income actually derived, which reflects "fair cash value" for taxation purposes." Springfield Marine Bank v. Property Tax Appeal Board 44 Ill.2d 428 at 430-431.

Actual expenses and income can be useful when shown that they are reflective of the market. The appellant did not demonstrate that the subject's actual income and expenses were reflective of the market. The appellant's attorney merely provided a copy of a three-page report, entitled "Vacancy, Absorption & Capitalization Rate Overview, Second Quarter 2003 Chicago" prepared by Peterson Appraisal Group, Ltd. To demonstrate or estimate the subject's market value using an income approach, as the appellant attempted, one must establish through the use of market data the market rent, vacancy and collection losses, and expenses to arrive at a net operating income. Further, the appellant must establish through the use of market data a capitalization rate to convert the net income into an estimate of market value. The appellant failed to follow this procedure in developing the income approach to value; therefore, the Property Tax Appeal Board gives this argument no weight.

The Board further finds problematical the fact that appellant's counsel developed the "income approach" rather than an expert in the field of real estate valuation. The Board finds that an attorney cannot act as both an advocate for a client and also provide unbiased, objective opinion estimate of value for that client's property.

Although the board of review failed to provide any evidence in support of the subject's current assessment, the Property Tax Appeal Board finds the appellant has failed to demonstrate by a preponderance of the evidence that the subject property is overvalued. Therefore, the Property Tax Appeal Board finds that no reduction in the subject's assessment is warranted.

This is a final administrative decision of the Property Tax Appeal Board which is subject to review in the Circuit Court or Appellate Court under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.) and section 16-195 of the Property Tax Code.



Chairman



Member



Member



Member

Member

DISSENTING: _____

C E R T I F I C A T I O N

As Clerk of the Illinois Property Tax Appeal Board and the keeper of the Records thereof, I do hereby certify that the foregoing is a true, full and complete Final Administrative Decision of the Illinois Property Tax Appeal Board issued this date in the above entitled appeal, now of record in this said office.

Date: April 1, 2008



Clerk of the Property Tax Appeal Board

IMPORTANT NOTICE

Section 16-185 of the Property Tax Code provides in part:

"If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel after the deadline for filing complaints with the Board of Review or after adjournment of the session of the Board of Review at which assessments for the subsequent year are being considered, the taxpayer may, within 30 days after the date of written notice of the Property Tax Appeal Board's decision, appeal the assessment for the subsequent year directly to the Property Tax Appeal Board."

In order to comply with the above provision, YOU MUST FILE A PETITION AND EVIDENCE WITH THE PROPERTY TAX APPEAL BOARD WITHIN 30 DAYS OF THE DATE OF THE ENCLOSED DECISION IN ORDER TO APPEAL THE ASSESSMENT OF THE PROPERTY FOR THE SUBSEQUENT YEAR.

Based upon the issuance of a lowered assessment by the Property Tax Appeal Board, the refund of paid property taxes is the responsibility of your County Treasurer. Please contact that office with any questions you may have regarding the refund of paid property taxes.